

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

FILED
JUN 21 2017
Clerk, U.S. District Court
District Of Montana
Missoula

SHAWN HOWARD WELLER,

Petitioner,

vs.

MICHAEL FLETCHER, ATTORNEY
GENERAL OF THE STATE OF
MONTANA,

Respondents.

CV 17-59-H-DLC-JTJ

ORDER

United States Magistrate Judge John Johnston entered his Findings and Recommendation on May 30, 2017, recommending denial of Petitioner Shawn Howard Weller's ("Weller") motion for extension to file his petition for writ of habeas corpus. Judge Johnston also recommends dismissal of this matter without prejudice. Weller has failed to timely object to the Findings and Recommendation, and, as a result, has waived his right to de novo review of the record. 28 U.S.C. § 636(b)(1)(C). This Court reviews for clear error those findings and recommendations to which no party objects. *See McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." *United*

States v. Syrax, 235 F.3d 422, 427 (9th Cir. 2000) (citations omitted).

Having reviewed the Findings and Recommendation, the Court finds no clear error in Judge Johnston's conclusion that Weller's motion should be denied and the matter dismissed. The Court agrees with Judge Johnston that granting the motion would be improper because Weller has not yet filed a petition for writ of habeas corpus and, thus, this matter should be dismissed because no case or controversy is currently at bar. U.S. Const. art. III, § 2.

Accordingly, there being no clear error in Judge Johnston's Findings and Recommendation, IT IS ORDERED that:

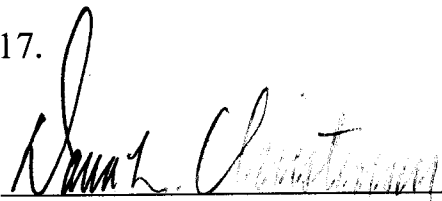
(1) Judge Johnston's Findings and Recommendation (Doc. 4) are ADOPTED IN FULL.

(2) Weller's Motion for 45 Days Extension (Doc. 1) is DENIED and this matter is DISMISSED without prejudice.

(3) The Clerk of Court is directed to enter, by separate document, a judgment in favor of Respondents and against Petitioner.

(4) A certificate of appealability is DENIED.

Dated this 21st day of June, 2017.



Dana L. Christensen, Chief Judge
United States District Court